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8
9 IN THE UNITED STATES DISTRICT COURT

10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 ANGEL LOPEZ, AND
15 ROCHLEM ERIC AQUINO YADAO

16 Defendants.

CASE NO. 1:20-CR-00241-ADA-BAM

STIPULATION TO CONTINUE STATUS
CONFERENCE; ORDER

DATE: March 22, 2023

TIME: 1:00 p.m.

COURT: Hon. Barbara A. McAuliffe

17
18 This case is set for status conference on March 22, 2023. On May 13, 2020, this Court issued
19 General Order 618, which suspends all jury trials in the Eastern District of California “until further
20 notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under 18
21 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s
22 judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after
23 May 2, 2021.¹ This and previous General Orders, as well as the declarations of judicial emergency,
24 were entered to address public health concerns related to COVID-19.

25 Although the General Orders and declarations of emergency address the district-wide health
26 concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice provision

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28 ¹ A judge “may order case-by-case exceptions” at the discretion of that judge “or upon the
request of counsel, after consultation with counsel and the Clerk of the Court to the extent such an order
will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020).

1 “counteract[s] substantive openendedness with procedural strictness,” “demand[ing] on-the-record
 2 findings” in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-
 3 record findings, there can be no exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such
 4 failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153
 5 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit
 6 findings on the record “either orally or in writing”).

7 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 8 and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent declaration of judicial
 9 emergency require specific supplementation. Ends-of-justice continuances are excludable only if “the
 10 judge granted such continuance on the basis of his findings that the ends of justice served by taking such
 11 action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C.
 12 § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of
 13 the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of
 14 such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

15 The General Orders and declaration of judicial emergency exclude delay in the “ends of justice.”
 16 18 U.S.C. § 3161(h)(7) (Local Code T4). The Government’s position is that although the Speedy Trial
 17 Act does not directly address continuances stemming from pandemics, natural disasters, or other
 18 emergencies, this Court has discretion to order a continuance in such circumstances. For example, the
 19 Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption.
 20 *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it
 21 impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326,
 22 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks
 23 and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier
 24 to the prompt proceedings mandated by the statutory rules.

25 In light of the foregoing, this Court should consider the following case-specific facts in finding
 26 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)
 27 (Local Code T4).² If continued, this Court should designate a new date for the status conference.

28 ² The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.

¹ *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be
² “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant's counsel of record, hereby stipulate as follows:

1. By this stipulation, the government and defendant now move to set the matter for jury trial on January 30, 2024, and to exclude time between March 22, 2023, and January 30, 2024, under Local Code T4.

2. The parties further request that the matter be set for a trial confirmation hearing on January 8, 2024.

3. The parties further request an additional status conference on this matter, for August 9, 2023.

4. By this stipulation, the parties now move to continue the status conference until August 9, 2023, and to exclude time between March 22, 2023, and January 30, 2024, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

5. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes reports, photographs, and audio files. All of this discovery has been either produced directly to counsel and/or made available for inspection and copying. Additionally, a plea agreement has been provided or will be provided to defendants.

b) Counsel for defendant desires additional time to further review discovery, discuss potential resolution with her client and the government, and investigate and prepare for trial.

c) Counsel for defendant believes that failure to grant the above-requested continuance would deny him/her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the

Cal. March 18, 2020).

1 case as requested outweigh the interest of the public and the defendant in a trial within the
2 original date prescribed by the Speedy Trial Act.

3 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
4 et seq., within which trial must commence, the time period of March 22, 2023 to January 30,
5 2024, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code
6 T4] because it results from a continuance granted by the Court at the parties' request on the basis
7 of the Court's finding that the ends of justice served by taking such action outweigh the best
8 interest of the public and the defendants in a speedy trial.

9 g) The parties also agree that this continuance is necessary for several reasons,
10 including but not limited to, the need to permit time for the parties to exchange supplemental
11 discovery, engage in plea negotiations, and for the defense to continue its investigation and
12 preparation, pursuant to 18 U.S.C. § 3161(h)(7)(A) and 3161(h)(7)(B)(i) and (iv).

13 6. Nothing in this stipulation and order shall preclude a finding that other provisions of the
14 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
15 must commence.

16 IT IS SO STIPULATED.

17 Dated: March 15, 2023

PHILLIP A. TALBERT
United States Attorney

18
19 /s/ STEPHANIE M. STOKMAN
20 STEPHANIE M. STOKMAN
Assistant United States Attorney

21 Dated: March 15, 2023

22 /s/ JAMES R. HOMOLA
23 JAMES R. HOMOLA
Counsel for Defendant
24 ANGEL LOPEZ

25 Dated: March 15, 2023

26 /s/ MELISSA BALOIAN
27 MELISSA BALOIAN
Counsel for Defendant
ROCHLEM ERIC AQUINO
YADAO

ORDER

IT IS SO ORDERED that the status conference set for March 22, 2023, is vacated. A jury trial is set for **January 30, 2024, at 8:30 a.m. before District Judge Ana de Alba**. Estimated time of trial is **5 days**. A trial confirmation is set for **January 8, 2024, at 8:30 a.m. before District Judge Ana de Alba**. In addition, the Court sets a status conference on this matter, for **August 9, 2023, at 1:00 p.m. before Magistrate Judge Barbara A. McAuliffe**. Time is excluded through trial pursuant to 18 U.S.C. §§ 3161(h)(7)(A), B(iv).

IT IS SO ORDERED.

Dated: **March 16, 2023**

/s/ Barbara A. McAuliffe

UNITED STATES MAGISTRATE JUDGE